

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

GREGORY COLBURN et al.,

Defendants.

No. 1:19-cr-10080-NMG

**DEFENDANT JOHN WILSON'S MOTIONS (1) FOR RELIEF BASED ON  
THE GOVERNMENT'S IMPROPER SEARCH AND SEIZURE OF  
EMAILS; AND (2) FOR LEAVE TO FILE EX PARTE  
AND UNDER SEAL**

Pursuant to search warrants, the government seized the entire email accounts of several defendants, including John Wilson. In its application for and execution of the warrant, the government:

1. Relied intentionally or recklessly on false statements in its affidavit, without which the affidavit failed to establish probable cause;
2. Overstepped the bounds of the warrant and the Fourth Amendment by conducting a general search and seizing thousands of emails outside the scope of the search that the warrant described; and
3. Further violated Wilson's rights by seizing thousands of privileged marital communications between Wilson and his wife, ignoring the privilege, eliminating the government's own taint team from the review process, delivering the privileged documents to the trial team, and then distributing those communications to 22 defendants.

Accordingly, and pursuant to *Franks v. Delaware*, *Kastigar v. United States*, the marital-communications privilege, and other authorities, Wilson asks the Court to:

- (a) Hold hearings and suppress the fruits of the warrant;
- (b) Hold hearings and disqualify prosecutors and witnesses tainted by exposure to the private, privileged, impermissibly-seized documents from further participation in this matter; and
- (c) Sever Wilson's trial from those of his codefendants.

Wilson is filing the Motion at this time, and was unable to do so earlier, because the Motion relies heavily on information and documents that the government produced in March-April 2020—as part of an extensive series of productions<sup>1</sup>—which Wilson's counsel have been reviewing and analyzing since.

In support of the Motion, Wilson seeks to submit a memorandum of law and two declarations. The declarants will be Wilson's defense attorney, Michael Kendall, and Wilson's wife, Leslie.

This motion deals with the government seizing, reading, and disseminating thousands of emails that the Wilsons exchanged, and that are protected by the marital privilege. These documents discuss Wilson's most private communications, and are pertinent to his confidential trial strategy. *Any* public submission analyzing these facts and issues would cause further harm to Wilson's privacy, privilege, and Sixth Amendment rights. Accordingly, Wilson requests leave to submit his memorandum of law under seal, with a copy to the government.

Furthermore, the two declarations that Wilson seeks to file will provide detailed descriptions of the private, privileged communications that the government has impermissibly rummaged through, as well as a detailed analysis of the manner in which this violation of

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<sup>1</sup> From March 16, 2020 through May 7, 2020, the government made eight productions to defendants, which together contained more than half a million records.

Wilson's rights will harm his trial defense. The declarations will emphasize, with examples, some of the most highly private portions of the emails at issue, and will lay out the trial implications of these emails in some detail. Wilson therefore requests leave to submit his declarations ex parte and under seal, with a redacted copy of Mr. Kendall's affidavit to the government.

The government has informed Wilson's counsel that it "reserves its rights" with regard to his request to file his memorandum under seal and his declarations ex parte (with a redacted copy of one declaration to the government).

Respectfully submitted:

*Counsel to John Wilson:*

/s/ Michael Kendall

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 112.1**

I hereby certify that, before filing this motion, defense counsel attempted in good faith to confer with the government to resolve or narrow the issues.

/s/ Michael Kendall  
Michael Kendall

**CERTIFICATE OF SERVICE**

This Motion is being filed on the date appearing in the header through the ECF system, which will provide electronic copies to counsel of record.

/s/ Michael Kendall  
Michael Kendall